

Charities Focus



Applications open to register Charitable Incorporated Organisations

The supporting legal framework for the charitable incorporated organisation (CIO) came into force on 2 January 2013. The Charity Commission started to accept applications to register brand new charities as CIOs on 10 December 2012. The Charity Commission has now registered the first CIOs and has received over 300 enquiries from charities about CIOs.

The first CIOs did not appear on the Charity Commission's register until 3 January 2013 because the supporting legal framework had to come into force first.

Applications are currently only being accepted by the Charity Commission to register new charities as CIOs because the legislative provisions enabling existing charitable companies, community benefit

Industrial & Provident Societies etc to convert into CIOs will not come into force until later. The Cabinet Office has published an implementation timetable.

The CIO will add to the range of legal structures available to charities and will be suitable for some charities, but not all. Existing charities will not be forced to convert to the CIO structure, but some may wish to consider doing so when it becomes

possible through the implementation timetable. There are potential advantages and disadvantages to the CIO structure (as there are for all legal structures available to charities) and any organisation should look carefully at the legal framework before making the leap.

We can provide further information about setting up new charities as CIOs and the implementation timetable if required.

Gerry Morrison

Visit our new website

Technology and design move at a fast pace, and our website had become rather dated. We felt it was time to refresh the design of the site and to make some key improvements to explain more fully who we are and what we have to offer.

The new site design provides visitors with improvements in navigation, appearance and accessibility. Additions include a dedicated section for our sector specialisms and a directory of all of our people.



Please do go online at www.rollits.com and have a look at it and give us your feedback. We hope you find it useful.

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Volunteer deemed not to be employee

In the case of Mid-Sussex Citizens' Advice Bureau, a volunteer adviser claimed that the actions of the Citizens' Advice Bureau in discontinuing her services amounted to discrimination against her on the grounds of disability in contravention of the Disability Discrimination Act 1995 and an EC directive establishing a framework for equal treatment in employment and occupation.



The proceedings were important in the context of charities using volunteers because during the proceedings the parties agreed that if the volunteer adviser was protected by the Disability Discrimination Legislation then employment rights could generally be regarded as applying to volunteers.

The Supreme Court has now ruled that the relevant EC directive does not cover voluntary activity and neither does the Supreme Court regard it as necessary to refer the issue to the European Court of Justice.

This verdict is important in the context of charities using volunteers because had it gone the other way, if employment rights were to be deemed to apply to volunteers generally then charities using volunteers would have had to review their employment and volunteer policies across the board.

Charities should still take care when using volunteers and in particular, if using volunteer agreements and take advice before putting these in place. We can assist if required.

Gerry Morrison

Government's Interim Response to Lord Hodgson's Review of the Charities Act 2006

The Government has provided an initial response to Lord Hodgson's Review of the Charities Act 2006 and his recommendations.

For the most part, Lord Hodgson's recommendations have been widely accepted by the Government or the Government has conceded they require more consideration before it can accept or reject them. However, the Government has rejected outright introducing a legal power to pay trustees of larger charities.

Given the controversy behind this recommendation and the fact that the payment of trustees simply for acting as trustees is a controversial and divisive issue, the Government's response is perhaps, unsurprising.

Despite the controversy exceptions can still be made in circumstances where it can be clearly demonstrated to be in the charity's best interests, conflicts of interest are effectively and actively managed and with prior Charity Commission consent to amend a charity's governing document if necessary to provide the power. In the

light of this it should be considered whether it is really necessary to change the existing law. However, care should always be taken before paying trustees under contracts of employment with the charity and the Charities Act 2011 provisions to pay trustees for the supply of services to the charity etc cannot be used to pay trustees under contracts of employment with the charity. We have often seen charities get confused about when they can and cannot use the Charities Act 2011 provisions to pay trustees.

We are awaiting the Government's full response which is expected in early 2013 and to see whether any of Lord Hodgson's recommendations ultimately result in amending legislation.

We will keep up to date with the situation and issue further reports as the matter develops.

Gerry Morrison



Gift Aid Small Donations Scheme to be introduced April 2013

The Small Charitable Donations Act 2012 received Royal Assent on 19 December and will come into force on 6 April 2013. The Act will introduce the Gift Aid Small Donations Scheme which will enable charities and community amateur sports clubs to claim a Gift Aid type payment on small donations of cash of up to £20 without having to obtain a Gift Aid Declaration. Charities and community amateur sports clubs that are eligible for the Scheme will be able to claim top-up payments on small donations to a total of £5,000 a year.



There will be conditions attached to the Scheme and HM Revenue & Customs intends to produce starter level guidance on the Gift Aid Small Donations Scheme for all charities and more detailed guidance for larger charities and charity representatives. In the New Year, HM Revenue & Customs also intends to write to every charity that has claimed Gift Aid within the past 3 years about the Gift Aid Small Donations Scheme and Gift Aid online.

There is concern that because of the conditions attached to the Scheme it will prove difficult to administer and bureaucratic, particularly for the smaller charities it is designed to help. However, it is hoped that H M Revenue & Customs guidance will provide the necessary clarity. Whether or not it provide the necessary clarity remains to be seen and we can provide further information and advice if required.

Gerry Morrison

Charities face risks from pension deficits

The collapse of People Can, a Liverpool-based charity that helps the homeless and domestic abuse victims, due to its inability to repay its pensions deficit, highlights the risks charities face from pensions obligations.

The charity is a participating member in the Social Housing Pension Scheme (SHPS), a defined benefit scheme that it joined when it was a Registered Social Landlord. The charity's pension deficit was revalued by the Pensions Trust, who administer the SHPS, from £11 million earlier in the year to £17 million by the time it went into administration in November 2012.

The Pensions Trust felt that the charity was insufficiently resourced, and it would require payment of the whole of the £17 million debt. The charity had insufficient assets to enable the debt to be repaid, even though it stated that it could meet its on-going pensions contributions.

Charities like People Can, that have either set up defined benefit schemes or joined schemes such as the Local Government Pension Scheme or the

SHPS as a response to taking on public sector workers in outsourced contracts that meet government's best-value requirements, may find that they have relatively large pension liabilities that they will ultimately be responsible for.

This may include contributions at levels that may be hard to sustain, particularly if those levels are increased in response to increasing scheme deficits, as many charities run on tight margins and struggle to obtain funding to ease cash-flow pressures.

This will particularly be the case where the pension scheme is large relative to the size of the charity.

Observers have warned that further insolvencies amongst charities may be expected due to the weight of their pensions liabilities. In fact, the Pensions



Trust have issued a warning to some of its 'higher risk' members that they may not have enough assets to cover their liabilities, and have suggested that these organisations switch their staff out of their defined benefit schemes to defined contribution schemes.

Charities can take other positive action to lessen their deficits by paying more money into the scheme if possible or make payments for longer, as relying on investment returns remains risky, but the position remains difficult for many organisations.

Craig Engleman

The advancement of religion and Charitable Status

Last year, the case of the Preston Down Trust ignited debate about the interpretation of the law following the removal of the presumption of public benefit in favour of charities for the advancement of religion, education and relief of poverty by the Charities Act 2006 (now consolidated into the Charities Act 2011). The Preston Down Trust runs a meeting hall of the Plymouth Brethren in Paignton, Devon.



The Charity Commission refused an application by the Preston Down Trust for registered charitable status on the basis that it did not fulfil the public benefit requirement. To be recognised as a charity in England and Wales an organisation must be established for a legitimate charitable aim and be for public as opposed to private benefit.

The Charity Commission has given reasons for refusing the Preston Down Trust's application for registered charity status including that it had concerns about the lack of public access to participation in religious services including holy communion. The Charity Commission also stated that in its opinion the charity had limited engagements with the wider public, was primarily for the benefit of its

members and that there was little evidence of its beneficial impact on the wider public.

Some commentators have challenged the Charity Commission's interpretation of the law in relation to public benefit and the Preston Down Trust's case. The Charity Commission has said that it doubts that a 1981 case whereby registered charity status was granted to a Brethren meeting hall can still be cited as authority following the removal of the presumption that religion generally is for the public benefit.

Whether the Preston Down Trust case will have implications for other religious charities remains to be seen. However some faith-based organisations have

expressed concerns, and there is doubt about what this means for the organisations that restrict access to services or activities on the basis of who subscribes to their articles of faith. The Charity Commission has been criticised for taking a too literal interpretation of what the law on public benefit means and for assuming that all pre-2006 case law is inadequate authority.

Now that its charity registration application has been turned down, the Preston Down Trust is having to appeal its case by lodging an appeal with the Charity Tribunal (at its own expense). There has been a lot of criticism of the case and it will be interesting to see the outcome of the appeal and whether it has any implications for other religious charities or faith-based organisations hoping to obtain registered charity status.

Gerry Morrison

Information

If you have any queries on any issues raised in this newsletter, or any education matters in general please contact Gerry Morrison on (01904) 625790 or email gerry.morrison@rollits.com

This newsletter is for the use of clients and will be supplied to others on request. It is for general guidance only. It provides useful information in a concise form. Action should not be taken without obtaining specific advice. We hope you have found this newsletter useful.

If, however, you do not wish to receive further mailings from us, please write to Pat Coyle, Rollits, Wilberforce Court, High Street, Hull, HU1 1YJ.

The law is stated as at 7 January 2013.

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